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TRIBAL COURT
OF THE
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

ALICE YELLOWBANK,
Plaintiff,

v.

Case No. C-018-0300

GERALD V. CHINGWA,
DOROTHY GASCO,
RITA SHANNANQUET,
JANET SHOMIN and
SUSAN WYSOCKI,
Defendants.

HEARING DECISION

HEARING DECISION

This matter involves a claim by Plaintiff that she was wrongfully removed from the Tribal Council executive position of Vice-Chairperson. The issue presented is whether her removal from that position was unlawful.

I. ARE CLOSED SESSIONS OF THE TRIBAL COUNCIL UNCONSTITUTIONAL?

The interim Tribal Constitution and Bylaws provide that meetings of the Tribal Council be open to the membership of the Bands. *See Article I, Section 3.* Plaintiff argues the provision both mandates open meetings and prohibits closed meetings. She makes this argument in spite of the following: (1) conceding that the Tribal Council should be able to go into closed session when there is a necessity to do so (See Plaintiff's *Response to Defendants' Brief*, p. 2); (2) having participated, as a member of the Tribal Council, in numerous closed sessions of Tribal Council without objection; and (3) Tribal Council enactments that provide for closed sessions of Tribal Council. Defendants argue that the provision does not expressly prohibit closed sessions. Plaintiff called the sole author of the interim Tribal Constitution and Bylaws as a witness to present evidence of the intent of the provision at issue. That witness testified that it was his intent that all tribal business be conducted in meetings open to tribal membership.

The interim Tribal Constitution and Bylaws is the supreme organic governing document of the Bands. It provides the basic framework for tribal government. Meaning to its provisions are given within that basic framework by the legal, political and practical realities faced by the tribal community. This Court agrees with both parties that there is a need for Tribal Council to meet in closed sessions from time-to-time to effectively serve and carry out its fiduciary duties to tribal membership. Private negotiations for the purchase of land for the Bands, confidential discussions regarding business considerations for maximum economic development, confidential discussion regarding personnel actions, discussion about legal strategies are common examples of the current need for Tribal Council to meet in closed sessions. The Court must not ignore these important needs in construing the interim Tribal Constitution and Bylaws. To ignore them would be to ignore the organic, or living nature, of the supreme law of the Bands. Necessity dictates that the lack of an express prohibition against meeting in closed sessions gives the Tribal Council the flexibility it needs to effectively serve Tribal members. **For all of the foregoing, the Court decides that closed sessions of the Tribal Council are not unconstitutional.** However, the Court respectfully recommends that the Tribal Council adopt express written policies and procedures that maximize the conduct of tribal business in open sessions and minimizes the conduct of tribal business in closed sessions. In making the instant decision and recommendation, two things that were not lost on the Court are that Plaintiff did not complain of closed sessions until she was removed from her executive position and that the open meetings of government promote better government by providing a membership check and balance of the power of Tribal Council.

II. WAS PLAINTIFF'S REMOVAL FROM THE POSITION OF VICE-CHAIRPERSON UNLAWFUL?

Plaintiff recognizes that although the Court can ensure fairness in tribal law and its application, it can not make politics fair. *See Plaintiff's Hearing Statement, p. 1.* Election and removal to and from executive positions of the Tribal Council by Tribal Council members is purely a political matter. It should not be confused with the right of recall from Tribal Council by tribal voters, nor removal of a member of the Tribal Council for cause by the other members

of the Council. Unfortunately, the interim Tribal Constitution and Bylaws does confuse recall and removal. Furthermore, Plaintiff confuses the removal from an executive position of the Tribal Council with a complete removal from the Tribal Council itself. Those are two completely different kinds of removal and each has its own process. The provisions of the interim Tribal Constitution and Bylaws regarding removal only relate to complete removal from the Tribal Council. They do not apply to a mere removal from an executive position. These latter are internal political matters solely within the purview of the Tribal Council itself. The power of the Tribal Council to elect from within those positions also encompasses by implication the political power to remove. See Article IV, Section 2. This power may be exercised solely for political reasons, i.e. without cause.

Plaintiff complains because her removal from the position of Vice-Chairperson occurred in closed session. This Court has decided that Tribal Council can meet in closed session in appropriate circumstances. Was this one of those appropriate circumstances? Plaintiff says that she wanted to be heard in open session. Defendants argue that they went into closed session to protect the privacy rights of Plaintiff. Furthermore, during the Hearing one Defendant testified that the Tribal Council did not want to air dirty laundry in public, but instead take care of it in the laundromat. Plaintiff voluntarily left the meeting when it went into closed session. In spite of being asked to return to discuss her actions under challenge while serving in her executive capacity she declined. Did she err in judgment? Did Tribal Council err by considering the matter in closed session? It is clear that Plaintiff had an explanation for each challenged action. A face-to-face meeting and discussion might have prevented her removal.

Even if the Tribal Council erred, it was harmless error to the Plaintiff because such removals may be based on nothing more than raw political power. This Court feels that Plaintiff made an error in judgment when she decided not to defend her actions in front of the rest of the Council. By voluntarily absenting herself, she waived her right to engage in the political fight for her position.

III. DOES TRIBAL SOVEREIGN IMMUNITY DEPRIVE THIS COURT OF JURISDICTION?

This Court agrees with the arguments of Plaintiff that the holding in another case applies to the instant matter. See *Deckrow v Little Traverse Bay Bands of Odawa Indians*, Decision on Motion To Dismiss, Case N. C-006-0398, May 27, 1998. That **case law precedent** provides **that the interim Tribal Constitution expressly waives tribal sovereign immunity in cases filed by tribal members to petition for action or the redress of grievances.** The Court does not feel it is necessary to repeat its analysis and reasoning here.

IV. CAN THE TRIBAL COUNCIL WAIVE MEETING NOTICE REQUIREMENTS?

The interim Tribal Constitution and Bylaws requires meeting notice. The notice requirement is to ensure open government by giving tribal membership notice of Tribal Council meetings. It was brought to the Court's attention in this matter that the Tribal Chairman asked that Tribal Council members themselves waive the notice requirement for a Special Meeting that he wished to call. Apparently the Chairman then thought that the purpose of notice requirement was to give Tribal Council members adequate notice. Although that is important, the requirement is mandated by the Tribal Constitution and Bylaws to give notice to the tribal membership that the Tribal Council is going to meet to conduct tribal business. Notice is given by the public posting of the meeting agenda. It provides for open government and informs tribal members of the tribal business to be conducted. **Tribal Council members can not waive the meeting notice requirements mandated by the Tribal Constitution.**

FOR ALL OF THE FOREGOING, this Honorable Court **DISMISSES** Plaintiff's Complaint.

6-19-00

DATED

MICHAEL PETOSKEY
CHIEF JUDGE

